

**UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA**

**JTS, LLC d/b/a JOHNSON'S TIRE  
SERVICE, LLC,**

**Plaintiff,**

vs.

## **NOKIAN TYRES PLC; NOKIAN TYRES, INC.**

## Defendants.

3:14-cv-00254 JWS

## ORDER

**[Re: Motions at Dockets 68, 75]**

At docket 68, Defendants filed a motion for sanctions or, alternatively, a motion to compel based upon Plaintiff's failure to provide initial disclosures as required by Rule 26(a)(1). Plaintiff responds at docket 71. Defendants reply at docket 74. Defendants then filed a motion to compel at docket 75 based upon Plaintiff's failure to respond to discovery requests. Plaintiff did not file a response. Oral argument was not requested and would not be of additional assistance to the court.

## **INITIAL DISCLOSURES (Motion at docket 68)**

Plaintiff filed its complaint on December 24, 2014. Shortly thereafter Plaintiff's attorney, Bryon E. Collins, was suspended from the practice of law. Attorney Lance Wells entered an appearance on Plaintiff's behalf. On August 25, 2015, Plaintiff filed a motion to stay proceedings and deadlines, which the court granted. Thereafter, a new attorney, Vikram Chaobal, entered an appearance on behalf of Plaintiff. The

1 proceedings remained stayed until March of 2016 at which time the court issued an  
2 amended scheduling and planning order.<sup>1</sup> Pursuant to the amended order, the parties  
3 were to exchange initial disclosures by April 4, 2016. Plaintiff did not file its disclosures.  
4 Rather, Mr. Chaobal withdrew from the case, and, in May of 2016, Plaintiff's current  
5 counsel entered an appearance. Plaintiff did not file any request to extend the Rule 26  
6 discovery deadline. On June 8, 2016, almost two months after the deadline, Plaintiff  
7 provided only 122 pages of discovery consisting of an internet printout of Defendants'  
8 "interim report" from January through September of 2014; Defendants' 2013 annual  
9 report; some previously discovered affidavits; and a few emails and correspondence.<sup>2</sup>  
10 Plaintiff did not provide any documentation bearing on the damages Plaintiff alleged in  
11 its complaint, as required under Rule 26(a)(1)(A)(iii) and as specifically requested by  
12 Defendants' counsel in correspondence. The parties conferred on the matter, but  
13 Plaintiff nonetheless did not produce thorough initial disclosures. Defendants then filed  
14 their motion for sanctions or to compel at docket 68, asking that the court preclude  
15 Plaintiff from using any subsequently disclosed information or witnesses or,  
16 alternatively, order Plaintiff to provide the required discovery and award attorneys' fees  
17 to Defendants.

18 In its response, Plaintiff acknowledges that it has failed to adequately produced  
19 the required initial discovery. It states that the reason for the delay has been due to the  
20 change in counsel and bankruptcy proceedings. It argues, however, that it has recently  
21 started producing documents and that on July 22, 2016, it produced "binders" of  
22 records.<sup>3</sup> Plaintiff asserts that "[b]y the time the court . . . [rules] on this matter, defense

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26 <sup>1</sup>Doc. 54.

27 <sup>2</sup>Doc. 69 at p. 3.

28 <sup>3</sup>Doc. 71 at p. 3.

1 counsel will have all Rule 26(a) disclosures [fully] availed, included a damages  
2 computation.”<sup>4</sup> Moreover, it argues that any delay has been harmless.

3 Defendants filed their reply on August 8, 2016. They challenge the adequacy of  
4 Plaintiff’s disclosures related to damage calculations that were provided after Plaintiff  
5 filed its response. They assert that while a number of financial spreadsheets have  
6 been produced, the spreadsheets do not provide any meaningful computation of  
7 damages, and there is no other support documentation provided.

8 Rule 26(a)(1)(A)(iii) requires that Plaintiff provide a computation of any damages  
9 claimed and allow for inspection and copying of any supporting documentation. A  
10 computation assumes some sort of analysis or assessment.<sup>5</sup> Plaintiff has not  
11 adequately placed Defendants on notice as to the amount of damages claimed nor has  
12 it adequately explained or supported the alleged amount as required under the rule.<sup>6</sup>  
13 Therefore, Defendants’ motion at docket 68 is GRANTED as follows:

14 Given that the litigation is still in the discovery phase,<sup>7</sup> the court will provide  
15 Plaintiff with additional time to comply with Rule 26(a)(1)(A)(iii) rather than sanction  
16 Plaintiff by precluding any evidence of damages at this time. Plaintiff is directed to  
17 provide a computation of damages, along with any supporting documentation, on or  
18 before October 3, 2016. Plaintiff is put on notice that if there are further delays in  
19 providing the ordered discovery, the court will preclude Plaintiff from using late-provided  
20 evidence on a motion, at a hearing, or at trial.<sup>8</sup>

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22 <sup>4</sup>Doc. 71 at p. 4.

23 <sup>5</sup>*Maharaj v. Cal. Bank & Trust*, 288 F.R.D. 458, 463 (E.D. Cal. 2013).

24 <sup>6</sup>See *Design Strategy, Inc. v. Davis*, 469 F.3d 284, 295 (2d Cir. 2006) (“[B]y its very  
25 terms Rule 26(a) requires more than providing—without any explanation—undifferentiated  
financial statements; it requires a ‘computation,’ supported by documents.”).

26 <sup>7</sup>At docket 73 the court extended the discovery deadlines in accordance with the request  
27 at docket 66.

28 <sup>8</sup>Fed. R. Evid. 37(c).

## **REQUEST FOR DISCOVERY RESPONSES (Motion at docket 75)**

At docket 75, Defendants request that the court compel Plaintiff to respond to the discovery requests propounded by Defendants on June 30, 2016. Plaintiff did not respond to the motion to compel and, therefore, Defendants' motion is well taken.<sup>9</sup> Their motion at docket 75 is GRANTED. However, because the court has provided Plaintiff with additional time to comply with its discovery obligations under Rule 26, the court will also extend Plaintiff's deadline for answering Defendants' requests for admissions, interrogatories, and requests for production. Plaintiff is directed to serve its answers and written responses to Defendants' interrogatories and requests for admissions and to respond to their requests for production on or before October 3, 2016.

## **ATTORNEYS' FEES**

13 Pursuant to Rule 37(a)(5) the court awards Defendants their reasonable  
14 attorneys' fees and expenses directly related to the drafting of the motions at  
15 dockets 68 and 75. Defendants are directed to file an accounting, setting forth the  
16 specific amount requested and supporting calculations on or before October 3, 2016.  
17 Plaintiff may file a response within seven days of Defendants' filing.

18 DATED this 21<sup>st</sup> day of September 2016.

/s/ JOHN W. SEDWICK  
SENIOR JUDGE, UNITED STATES DISTRICT COURT

<sup>9</sup> D.A.K. L.R. 7.1 (e)(1).